

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.602 OF 2005.**

Sharda S.Rajwade & Ors. . .Appellants

versus

Ankush V.Rajwade & Anr. . .Respondents.

Mr.Surel Shah for the Appellant

Mr.Nitin Deshpande for the respondent

**Coram : S.R.Sathe, J.
Dated : 22nd December, 2006**

P.C.

1. Heard learned Advocate for the appellant. Perused the papers. It is very clear that the appellant-original plaintiff filed suit simplicitor for permanent injunction restraining the defendants from alienating, the suit property and from transferring their right in the suit property by way of sale, agreement to sale, mortgage, lease etc and from creating any third party interest in the suit property through themselves, their servants or agents etc. The trial court decreed the suit in favour of the plaintiff. Being agrieved, the defendant filed the appeal. The appellate court, however, held that in view of the fact that the plaintiff has admittedly filed suits for partition in which the suit property is included, in view of

the provisions of Section 41 H of the Specific Relief Act and Section 39 of the Transfer of Property Act, the plaintiff is not entitled to get the relief in question.

2. The learned Advocate for the appellant/plaintiff submitted that the case will not fall under Section 41H of the Specific Relief Act because there is no certainty that the plaintiff would be in a position to succeed in the suit for partition. It must be noted that what is to be seen while considering Section 41H of the Specific Relief Act is whether equally efficacious relief can definitely be claimed by the party. It is not expected to find out as to whether the party would definitely get the alternate remedy if recourse for the same is adopted by the party. The first appellate court has dealt with this aspect properly and I do not find any error of law in the same.

3. Then, it must be noted that if it is the case of the plaintiff that she is a co-sharer in the suit property, then he can very well claim interim relief in the suit which he has already filed for partition in which the suit property is included.

Besides this, it is the case of the plaintiff that charge regarding maintenance has been kept on the suit property. When such is the position, in view of the provisions of Section 39 of the Transfer of Property Act, even if such property is sold by the defendant then obviously it would be subject to the charge of maintenance. So, to that extent, the plaintiff's interest is definitely protected. Considering all this I do not find that there is any substantial question of law involved in this appeal. Hence appeal is dismissed in limine.

4. At this stage the learned Advocate for the appellant-plaintiff submitted that ad-interim relief granted in his favour by the court be continued for a further period of four weeks.

5. In view of my earlier observations, it is in fact not necessary to continue the said ad-interim relief. The interest of the plaintiff is already protected by putting charge on the property in question. Hence, the appellant's prayer regarding continuing the ad-interim relief is rejected.

(S.R.Sathe, J.)